

SENATE BILL 187

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2004 Regular Session
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By: **The President (By Request - Administration)**

Introduced and read first time: January 23, 2004

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Office of the Comptroller - Tax Compliance - Holding Companies**

3 FOR the purpose of authorizing the Comptroller to distribute, apportion, or allocate
4 certain tax attributes between and among two or more organizations, trades, or
5 businesses under certain circumstances; requiring that certain interest
6 expenses and certain intangible expenses be added to the federal taxable income
7 of a corporation to determine Maryland modified income under certain
8 circumstances; requiring certain corporations under certain circumstances to
9 include with an income tax return or otherwise file with the Comptroller a
10 certain statement regarding certain dealings and transactions with related
11 corporations; providing for a certain tax credit under certain circumstances;
12 providing for a certain estimated payment; allowing the Comptroller to assess
13 interest and penalty for failure to provide the required estimated payment;
14 requiring the Comptroller to adopt certain regulations; defining certain terms;
15 making the provisions of this Act severable; providing for the effective date and
16 application of this Act; and generally relating to tax administration and
17 compliance.

18 BY adding to
19 Article - Tax - General
20 Section 10-109, 10-306.1, and 10-725
21 Annotated Code of Maryland
22 (1997 Replacement Volume and 2003 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article - Tax - General
25 Section 10-804(e)(3)
26 Annotated Code of Maryland
27 (1997 Replacement Volume and 2003 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
29 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Tax - General**

2 10-109.

3 (A) FOR ORGANIZATIONS, TRADES, OR BUSINESSES DOING BUSINESS IN THE
4 STATE OF MARYLAND, THE COMPTROLLER MAY DISTRIBUTE, APPORTION, OR
5 ALLOCATE GROSS INCOME, DEDUCTIONS, CREDITS, OR ALLOWANCES BETWEEN AND
6 AMONG TWO OR MORE ORGANIZATIONS, TRADES, OR BUSINESSES, WHETHER OR NOT
7 INCORPORATED, WHETHER OR NOT ORGANIZED IN THE UNITED STATES, WHETHER
8 OR NOT AFFILIATED, IF:

9 (1) THE ORGANIZATIONS, TRADES, OR BUSINESSES ARE OWNED OR
10 CONTROLLED DIRECTLY OR INDIRECTLY BY THE SAME INTERESTS WITHIN THE
11 MEANING OF § 482 OF THE INTERNAL REVENUE CODE; AND

12 (2) THE COMPTROLLER DETERMINES THAT THE DISTRIBUTION,
13 APPORTIONMENT, OR ALLOCATION IS NECESSARY IN ORDER TO REFLECT AN ARM'S
14 LENGTH STANDARD WITHIN THE MEANING OF § 1.482-1 OF THE REGULATIONS OF
15 THE INTERNAL REVENUE SERVICE OF THE U.S. TREASURY AND TO REFLECT
16 CLEARLY THE INCOME OF THOSE ORGANIZATIONS, TRADES, OR BUSINESSES.

17 (B) THE COMPTROLLER SHALL APPLY THE ADMINISTRATIVE AND JUDICIAL
18 INTERPRETATIONS OF § 482 OF THE INTERNAL REVENUE CODE IN ADMINISTERING
19 THIS SECTION.

20 10-306.1.

21 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
22 INDICATED.

23 (2) "BANK" MEANS:

24 (I) A BANK HOLDING COMPANY AS DEFINED IN THE FEDERAL
25 BANK HOLDING COMPANY ACT OF 1956, AS AMENDED, OR A BANK, TRUST COMPANY,
26 SAVINGS BANK, OR SAVINGS AND LOAN ASSOCIATION INCORPORATED OR
27 CHARTERED UNDER THE LAWS OF THIS STATE, ANOTHER STATE, OR THE UNITED
28 STATES; OR

29 (II) A SUBSIDIARY OR AFFILIATE OF AN ENTITY DESCRIBED IN
30 ITEM (I) OF THIS PARAGRAPH.

31 (3) "INTANGIBLE EXPENSE" MEANS:

32 (I) AN EXPENSE, LOSS, OR COST FOR, RELATED TO, OR IN
33 CONNECTION DIRECTLY OR INDIRECTLY WITH THE DIRECT OR INDIRECT
34 ACQUISITION, USE, MAINTENANCE, MANAGEMENT, OWNERSHIP, SALE, EXCHANGE,
35 OR ANY OTHER DISPOSITION OF INTANGIBLE PROPERTY, TO THE EXTENT THE
36 EXPENSE, LOSS, OR COST IS ALLOWED AS A DEDUCTION OR COST IN DETERMINING
37 TAXABLE INCOME FOR THE TAXABLE YEAR UNDER THE INTERNAL REVENUE CODE;

1 (II) A LOSS RELATED TO OR INCURRED IN CONNECTION DIRECTLY
2 OR INDIRECTLY WITH FACTORING TRANSACTIONS OR DISCOUNTING TRANSACTIONS;

3 (III) A ROYALTY, PATENT, TECHNICAL, OR COPYRIGHT FEE;

4 (IV) A LICENSING FEE; OR

5 (V) ANY OTHER SIMILAR EXPENSE OR COST.

6 (4) "INTANGIBLE PROPERTY" MEANS PATENTS, PATENT APPLICATIONS,
7 TRADE NAMES, TRADEMARKS, SERVICE MARKS, COPYRIGHTS, AND SIMILAR TYPES
8 OF INTANGIBLE ASSETS.

9 (5) "INTEREST EXPENSE" MEANS AN AMOUNT DIRECTLY OR INDIRECTLY
10 ALLOWED AS A DEDUCTION UNDER § 163 OF THE INTERNAL REVENUE CODE FOR
11 PURPOSES OF DETERMINING TAXABLE INCOME UNDER THE INTERNAL REVENUE
12 CODE.

13 (6) "RELATED ENTITY" MEANS A PERSON THAT, UNDER THE
14 ATTRIBUTION RULES OF § 318 OF THE INTERNAL REVENUE CODE, IS:

15 (I) A STOCKHOLDER WHO IS AN INDIVIDUAL OR A MEMBER OF THE
16 STOCKHOLDER'S FAMILY ENUMERATED IN § 318 OF THE INTERNAL REVENUE CODE,
17 IF THE STOCKHOLDER AND THE MEMBERS OF THE STOCKHOLDER'S FAMILY OWN
18 DIRECTLY, INDIRECTLY, BENEFICIALLY, OR CONSTRUCTIVELY, IN THE AGGREGATE,
19 AT LEAST 50% OF THE VALUE OF THE TAXPAYER'S OUTSTANDING STOCK;

20 (II) A STOCKHOLDER OR A STOCKHOLDER'S PARTNERSHIP,
21 LIMITED LIABILITY COMPANY, ESTATE, TRUST, OR CORPORATION, IF THE
22 STOCKHOLDER AND THE STOCKHOLDER'S PARTNERSHIP, LIMITED LIABILITY
23 COMPANY, ESTATE, TRUST, OR CORPORATION OWN DIRECTLY, INDIRECTLY,
24 BENEFICIALLY, OR CONSTRUCTIVELY, IN THE AGGREGATE, AT LEAST 50% OF THE
25 VALUE OF THE TAXPAYER'S OUTSTANDING STOCK; OR

26 (III) A CORPORATION OR A PARTY RELATED TO THE CORPORATION
27 IN A MANNER THAT WOULD REQUIRE AN ATTRIBUTION OF STOCK FROM THE
28 CORPORATION TO THE PARTY OR FROM THE PARTY TO THE CORPORATION UNDER
29 THE ATTRIBUTION RULES OF § 318 OF THE INTERNAL REVENUE CODE, IF THE
30 TAXPAYER OWNS DIRECTLY, INDIRECTLY, BENEFICIALLY, OR CONSTRUCTIVELY, AT
31 LEAST 50% OF THE VALUE OF THE CORPORATION'S OUTSTANDING STOCK.

32 (7) "RELATED MEMBER" MEANS A PERSON THAT, WITH RESPECT TO THE
33 TAXPAYER DURING ALL OR ANY PORTION OF THE TAXABLE YEAR, IS:

34 (I) A RELATED ENTITY;

35 (II) A COMPONENT MEMBER, AS DEFINED IN § 1563(B) OF THE
36 INTERNAL REVENUE CODE; OR

1 (III) A PERSON TO OR FROM WHOM THERE IS ATTRIBUTION OF
2 STOCK OWNERSHIP IN ACCORDANCE WITH § 1563(E) OF THE INTERNAL REVENUE
3 CODE.

4 (B) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IN ADDITION
5 TO THE MODIFICATIONS UNDER §§ 10-305 AND 10-306 OF THIS SUBTITLE, THE
6 AMOUNTS UNDER PARAGRAPH (2) OF THIS SUBSECTION ARE ADDED TO THE
7 FEDERAL TAXABLE INCOME OF A CORPORATION TO DETERMINE MARYLAND
8 MODIFIED INCOME.

9 (2) THE ADDITION UNDER THIS SUBSECTION INCLUDES ANY
10 OTHERWISE DEDUCTIBLE INTEREST EXPENSE OR INTANGIBLE EXPENSE IF THE
11 INTEREST EXPENSE OR INTANGIBLE EXPENSE IS DIRECTLY OR INDIRECTLY PAID,
12 ACCRUED, OR INCURRED TO, OR IN CONNECTION DIRECTLY OR INDIRECTLY WITH
13 ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH, ONE OR MORE RELATED
14 MEMBERS.

15 (C) THE ADDITION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION DOES
16 NOT APPLY TO ANY PORTION OF THE INTEREST EXPENSE OR INTANGIBLE EXPENSE
17 TO THE EXTENT THAT THE CORPORATION ESTABLISHES, AS DETERMINED BY THE
18 COMPTROLLER, THAT:

19 (1) THE TRANSACTION GIVING RISE TO THE PAYMENT OF THE INTEREST
20 EXPENSE OR INTANGIBLE EXPENSE BETWEEN THE CORPORATION AND THE
21 RELATED MEMBER DID NOT HAVE AS A PRINCIPAL PURPOSE THE AVOIDANCE OF
22 ANY PORTION OF THE TAX DUE UNDER THIS TITLE;

23 (2) THE INTEREST EXPENSE OR INTANGIBLE EXPENSE WAS PAID
24 PURSUANT TO ARM'S-LENGTH CONTRACTS AT AN ARM'S-LENGTH RATE OF INTEREST
25 OR PRICE; AND

26 (3) (I) DURING THE SAME TAXABLE YEAR, THE RELATED MEMBER
27 DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED TO A PERSON WHO IS NOT
28 A RELATED MEMBER, THE INTEREST EXPENSE OR INTANGIBLE EXPENSE;

29 (II) 1. THE RELATED MEMBER WAS SUBJECT TO A TAX
30 MEASURED BY ITS NET INCOME OR RECEIPTS IN THIS STATE AND OTHER STATES OR
31 POSSESSIONS OF THE UNITED STATES OR FOREIGN NATIONS;

32 2. A MEASURE OF THE TAX IMPOSED BY THIS STATE AND
33 OTHER STATES OR POSSESSIONS OF THE UNITED STATES OR FOREIGN NATIONS
34 INCLUDED THE INTEREST EXPENSE OR INTANGIBLE EXPENSE RECEIVED BY THE
35 RELATED MEMBER FROM THE CORPORATION; AND

36 3. THE EFFECTIVE RATE OF TAX PAID BY THE RELATED
37 MEMBER TO THIS STATE AND OTHER STATES OR POSSESSIONS OF THE UNITED
38 STATES OR FOREIGN NATIONS IN THE AGGREGATE ON THE AMOUNTS RECEIVED BY
39 THE RELATED MEMBER FROM THE CORPORATION IS EQUAL TO OR GREATER THAN
40 4%; OR

1 (III) IN THE CASE OF AN INTEREST EXPENSE, THE CORPORATION
2 AND THE RELATED MEMBER ARE BANKS.

3 (D) THIS SECTION MAY NOT BE CONSTRUED:

4 (1) TO REQUIRE A CORPORATION TO ADD TO ITS NET INCOME MORE
5 THAN ONCE ANY AMOUNT OF INTEREST EXPENSE OR INTANGIBLE EXPENSE THAT
6 THE CORPORATION PAYS, ACCRUES, OR INCURS TO A RELATED MEMBER; OR

7 (2) TO LIMIT OR NEGATE ANY OTHER AUTHORITY PROVIDED TO THE
8 COMPTROLLER UNDER THIS ARTICLE, INCLUDING:

9 (I) THE AUTHORITY TO MAKE ADJUSTMENTS UNDER § 10-109 OR §
10 10-402(D) OF THIS TITLE; OR

11 (II) THE AUTHORITY TO ENTER INTO AGREEMENTS AND
12 COMPROMISES OTHERWISE ALLOWED BY LAW.

13 (E) THE COMPTROLLER SHALL ADOPT ANY REGULATIONS THAT ARE
14 NECESSARY OR APPROPRIATE TO IMPLEMENT THIS SECTION.

15 10-725.

16 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
17 INDICATED.

18 (2) "PAYEE CORPORATION" MEANS A CORPORATION THAT HAS
19 RECEIVED PAYMENTS OF ROYALTIES, INTEREST, OR SIMILAR INCOME FROM
20 INTANGIBLES FROM A RELATED MEMBER.

21 (3) "RELATED MEMBER" HAS THE SAME MEANING AS SET FORTH IN §
22 10-306.1 OF THIS TITLE.

23 (B) A PAYEE CORPORATION MAY CLAIM THE CREDIT DESCRIBED IN
24 SUBSECTION (C) OF THIS SECTION IF, FOR THE SAME TAXABLE YEAR, THE RELATED
25 MEMBER THAT PAID TO THE PAYEE CORPORATION THE ROYALTIES, INTEREST, OR
26 SIMILAR INCOME FROM INTANGIBLES:

27 (1) IS SUBJECT TO THE ADDITION MODIFICATION SET FORTH IN §
28 10-306.1 OF THIS TITLE; AND

29 (2) PAID TO THE COMPTROLLER THE FULL AMOUNT OF MARYLAND
30 CORPORATION INCOME TAX DEVELOPED ON THE MARYLAND INCOME TAX RETURN
31 ON WHICH THE ADDITION MODIFICATION SET FORTH IN § 10-306.1 OF THIS TITLE
32 WAS INCLUDED.

33 (C) THE AMOUNT OF THE CREDIT ALLOWED UNDER SUBSECTION (B) OF THIS
34 SECTION IS EQUAL TO THE MARYLAND INCOME TAX LIABILITY OF THE RELATED
35 MEMBER THAT PAID THE ROYALTIES, INTEREST, OR SIMILAR INCOME FROM
36 INTANGIBLES TO THE PAYEE CORPORATION, AS COMPUTED ON ITS MARYLAND

1 INCOME TAX RETURN FILED WITH THE COMPTROLLER, REDUCED BY THE MARYLAND
 2 INCOME TAX LIABILITY OF THE RELATED MEMBER THAT PAID THE ROYALTIES,
 3 INTEREST, OR SIMILAR INCOME FROM INTANGIBLES TO THE PAYEE CORPORATION,
 4 COMPUTED WITHOUT REGARD TO THE ADDITION MODIFICATION REQUIRED IN §
 5 10-306.1 OF THIS TITLE.

6 10-804.

7 (e) Each person required under this subtitle to file an income tax return or
 8 estimated income tax declaration or return shall:

9 (3) attach to an income tax return or otherwise file with the Comptroller
 10 any records or statements that the Comptroller requires, including:

11 (i) for an individual who has income tax withheld from salary,
 12 wages, or other compensation for personal services, or other payments, a copy of the
 13 statement from the person who withholds the tax that states:

14 1. the amount of salary, wages, or other compensation for
 15 personal services paid and the income tax withheld; or

16 2. the amount of payments made and the income tax
 17 withheld; [and]

18 (ii) a copy of the federal income tax return:

19 1. for a corporation; and

20 2. if the Comptroller requests, for an individual; AND

21 (III) IF THE COMPTROLLER REQUESTS, FOR A CORPORATION THAT
 22 IS A MEMBER OF AN AFFILIATED GROUP OR CONTROLLED GROUP UNDER § 1504 OR §
 23 1563 OF THE INTERNAL REVENUE CODE, A STATEMENT OF ALL INTERMEMBER COSTS
 24 OR EXPENSES AND ALL INTERMEMBER SALES, EXCHANGES, OR OTHER
 25 TRANSACTIONS INVOLVING TANGIBLE OR INTANGIBLE PROPERTY FOR THE TAXABLE
 26 YEAR.

27 SECTION 2. AND BE IT FURTHER ENACTED, That:

28 (a) all corporations required to make the addition to federal taxable income set
 29 forth in § 10-306.1 of the Tax - General Article shall make estimated tax payments
 30 under § 10-821 of the Tax - General Article that reflect any increased Maryland
 31 corporation income tax liability resulting from the addition; and

32 (b) notwithstanding the provisions of §§ 13-602 and 13-702 of the Tax -
 33 General Article, with respect to those corporations required to make the addition to
 34 federal taxable income set forth in § 10-306.1 of the Tax - General Article, for all
 35 taxable years beginning in calendar year 2004 only, the payment of 110% or more of
 36 the tax paid for the prior taxable year, reduced by the credit allowed under § 10-703
 37 of the Tax - General Article, does not preclude the Comptroller from assessing:

1 (1) interest, under § 13-602 of the Tax - General Article, on unpaid tax;
2 and

3 (2) penalty, under § 13-702 of the Tax - General Article, on
4 underestimated tax.

5 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision this Act
6 or the application thereof to any person or circumstance is held invalid for any reason
7 in a court of competent jurisdiction, the invalidity does not affect other provisions or
8 any other application of this Act which can be given effect without the invalid
9 provision or application, and for this purpose the provisions of this Act are declared
10 severable.

11 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take
12 effect July 1, 2004, and shall be applicable to all taxable years beginning after
13 December 31, 2003.